

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 28 October 1998

on aid which Italy plans to grant to the steel company **Acciaierie di Bolzano SpA**

(notified under document number C(1998) 3439)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2000/66/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to Commission Decision No 2496/96/ECSC establishing Community rules for State aid to the steel industry ⁽¹⁾, and in particular Article 6(5) thereof,

Having given interested parties notice to submit their comments, and having regard to those comments ⁽²⁾,

Whereas:

I

By letter of 23 July 1998 the Commission informed the Italian authorities of its decision to initiate the procedure under Article 6(5) of Commission Decision No 2496/96/ECSC (hereinafter referred to as the 'Steel Aid Code') in respect of part of the environmental aid and research and development aid which the autonomous province of Bolzano planned to grant to the steel undertaking Acciaierie di Bolzano SpA (hereinafter referred to as 'ACB').

From the information available to the Commission, which was based essentially on the letters sent by the Italian authorities, the Commission draws the following conclusions.

Aid for research and development

Article 2 of the Steel Aid Code provides that aid granted to defray expenditure by steel undertakings on research and development projects may be deemed compatible with the common market if it is in compliance with the rules laid down in the Community framework for State aid for research and development ⁽³⁾.

The framework's provisions which are relevant to this Decision lay down that:

- aid may be authorised for industrial research provided that it involves the acquisition of new knowledge, the objective being the development of new products, processes or services;
- pre-competitive research and development projects are eligible provided they cannot be converted to or used for industrial applications or easily exploited from a commercial point of view.

It appeared to the Commission that, through the projects notified, ACB essentially intended to extend its range of products in order to penetrate new and more profitable markets. The products already existed and were already in production. It also appeared that a significant proportion of the investments would in fact be in the modernisation of the plant intended for the new products. Thus, rather than consisting of the development of new products in special steels, the project was aimed at the modernisation of ACB's products and the plant required to manufacture them.

⁽¹⁾ OJ L 338, 28.12.1996, p. 42.

⁽²⁾ OJ C 269, 28.8.1998, p. 5.

⁽³⁾ OJ C 45, 17.2.1996, p. 5.

The Commission noted further that the costs concerning plant, machinery and equipment which, it was claimed, were used for R & D, did not appear to be eligible because they were decided by the company independently, as part of the reconversion of the Bolzano plant: thus the aid in question did not apparently serve as an incentive for the investments.

Aid for protection of the environment

The compatibility of the environmental aid must be assessed under Article 3 of the Steel Aid Code, which provides that aid for environmental protection may be deemed compatible with the common market if it is in compliance with the rules laid down in the Community guidelines on State aid for environmental protection⁽¹⁾, in conformity with the application criteria outlined in the Annex to that Code.

In assessing this particular case, the Commission noted that the guidelines on environmental aid provide that aid that allows significantly higher levels of environmental protection to be attained than those required by mandatory standards may be authorised up to a maximum of 30 % gross of the eligible costs. Furthermore, the Annex to the Steel Aid Code provides that any advantage in terms of lower production costs as a result of the investment will in any case be deducted from the environmental aid.

The Annex also states that the higher aid level resulting from a significant improvement in environmental protection will apply only to the part of the investment aimed at additional environmental protection.

In view of the foregoing, it must be concluded that the investment is aimed solely at environmental protection, which means that it is not necessary to deduct any production costs, except for those relating to the investment in renovation of the company's head office and investment in new ecological plant for chemical pickling of steel coil and recovery of the liquid waste (which cannot be released into the environment because of the presence of toxic acids), which could be related to the steelmaking process. It is also clear from information in the Commission's possession that the proposed ecological investments would enable ACB to achieve a far higher level of environmental protection than the statutory minimum.

The independent experts' reports forwarded by the Italian authorities indicated that, as a result of the notified measures, concerning the adaptation of relatively recent plant, ACB would reduce concentration of primary and secondary dusts in the scrubbed fumes to 1 mg/Nm³, the statutory threshold in Italy being 10 mg/Nm³ (Presidential Decree No 203/88 and the Ministerial Decree of 12 July 1990). Nor would the fumes contain any CO or benzofurans (PCDD + PCDF), although

Italian law does not impose any standards. The measures would also help to reduce noise levels to below 50 dBA, compared with a legal threshold of 70 dBA. Sulphur dioxide, with a statutory limit of 1 700 mg/m³, would be completely eliminated as a result of the measures by means of a non-polluting methane heating system. Lastly, the reduction and filtering of fumes and dust, for which the statutory limit is 150 mg/Nm³, could be cut to under 25 mg/Nm³, and would be totally eliminated from the workplace.

The considerable extra expense involved in environmental investment in addition to that required to bring the plant into line with minimum standards would be justified, in this case, given the location of the steelworks in the middle of the city of Bolzano, which in the past has led people living near the works to form associations to protest about environmental conditions. For this reason ACB decided to invest on a far larger scale than would have been necessary to meet environmental standards, even opting to replace plant which, though by no means obsolete, would not achieve the higher level of environmental protection which the company desired.

This applies to the new ecological plant for chemical pickling and the recover of used acids. The experts' report sent by the Italian authorities indicated that the old plant, built in the mid-1970s, could have been used for another ten years, i. e. at least until 2008. This means that at present, just as ACB decides to replace it, the plant still has a significant residual lifespan, of over 25 %. The same goes for the new waste-water treatment system, which was installed in 1975 and could continue to be used until 2006.

The Commission thus had grounds for concluding that ACB planned to guarantee a significantly higher level of environmental protection than that required by law. Furthermore, it was clear from the notification that the increase in aid for the abovementioned ecological investments was not calculated on the basis of total investments (ITL 49,5 billion) but solely on the additional investment aimed at achieving a higher standard of protection (ITL 31,3 billion).

As regards the replacement of the roofs on the buildings which house the head office and the plant proper, for which the investments were to total some ITL 6,5 billion, the Commission concluded from the experts' reports that the state of dilapidation was such that the project was essential. It seemed likely, therefore, that the work would have been carried out in any case, since the state of the roof made it absolutely essential. In accordance with the Steel Aid Code, the Commission concluded that, since the ecological investments concerned projects which could not in any case be delayed, they could not be regarded as eligible for environmental aid.

⁽¹⁾ OJ C 72, 10.3.1994, p. 3.

Lastly, it seemed that the new ecological chemical pickling plant, for which the investment was to total ITL 13 billion, would have a significant effect on the production process; accordingly, the Commission informed the Italian authorities of its reservations concerning the acceptability of the investment, which, in order to qualify for aid, should have been confined solely to environmental protection. In reply, the Italian authorities submitted new figures on the eligible investments and the relevant aid and outlined the economic benefits derived by ACB, in particular those connected with the recycling of some of the pickled acids. This benefit, calculated at some ITL 100 million per year (total of ITL 1 billion over ten years) was therefore deducted, and the original figure for eligible investment was reduced from ITL 13 billion to 12 billion.

Therefore, with the exception of the investments for the re-roofing of the 'Sede' and 'Erre' buildings, housing respectively the company's head office and the plant proper, the Commission's assessment of all the other plans to grant environmental aid was favourable.

In view of the foregoing, it was difficult for the Commission to determine whether the aid for research and development and the aid for re-roofing the buildings housing the company's head office and plant proper were compatible with the common market. It was therefore necessary to initiate the procedure under Article 6(5) of Decision No 2496/96/ECSC in respect of the aid.

The Commission did not raise any objections to the planned aid for the other notified investments aimed at environmental protection. For this aid, therefore, in respect of which the Commission did not have any reservations, publication in the *Official Journal of the European Communities* of the decision to initiate the procedure simply constituted a formal invitation to the Member States to submit their comments to the Commission in accordance with the Annex to the Steel Aid Code.

II

The Commission called on the Italian Government to submit its comments; the other Member States and interested third parties were informed by way of the publication of the Decision to initiate the procedure.

By fax of 28 September 1998 the company *Wirtschaftsvereinigung Stahl* sent the Commission its comments, which were later forwarded to the Italian authorities. It agreed with the Commission's decision to initiate the procedure with respect to research and development aid and to part of the environmental aid concerning re-roofing.

On 12 October 1998 the Commission had received no other comments from Member States or interested third parties.

III

In response to the initiation of the procedure and the comments submitted by the interested third party, the Italian Government took some account of the Commission's position and announced its decision to cancel some of the disputed aid, thereby reducing environmental aid from ITL 12 447 million to ITL 11 672 million and research and development aid from ITL 1 600 million to ITL 1 234 million. The Italian Government also asked for authorisation to grant the aid not disputed in the decision to initiate the procedure.

IV

ACB is a company which manufactures products listed in Annex I to the ECSC Treaty; it is covered by the rules governing State aid laid down in that Treaty.

Article 4(c) of the ECSC Treaty provides that subsidies or aids granted by States, or special charges imposed by States, in any form whatsoever, are recognised as incompatible with the common market for coal and steel and should accordingly be abolished and prohibited with the Community. The Steel Aid Code specifically and exhaustively lists exceptions to the general ban on aid. Under certain conditions, it allows authorisation for aid for research and development (Article 2), for environmental protection (Article 3) and for closures (Article 4).

As was stated in Section I, aid granted for investment in R & D may be deemed compatible with the common market if it is in compliance with the rules laid down in the Community framework for State aid for research and development.

Following the reservations expressed by the Commission when it initiated the procedure, in particular those concerning the fact that part of the R & D aid was intended for new plant and machinery as part of the partial reconversion of the Bolzano plant, Italy reduced the eligible investment by ITL 1,8 billion, namely from ITL 7,8 billion to ITL 6 billion, thus planning a new aid figure of ITL 1,234 billion.

While noting the Italian authorities' irrevocable decision to reduce the level of R & D aid by the amount indicated, the Commission considers that ITL 2,823 billion of the remaining investment regarded by Italy as eligible for aid is still intended to support ACB's commercial ambition to extend its range of products in order to penetrate new and more profitable markets. The products already exist and are being produced by ACB's competitors; thus, rather than consisting in the development of new products in special steels, the project is aimed at the modernisation of ACB's products and the plant required to manufacture them.

However the documentation shows that, of the remaining R & D investment, ITL 3,177 billion will be used for the 'triplex' process, which allows methane to be injected at high pressure in order to cut argon consumption. This innovatory process has not so far been used industrially by any other European firm in the industry. If it is viable, it should eventually produce savings in energy and decarburisation costs of some 20 % compared with conventional technologies.

Furthermore, the Commission has no doubt that the aid in question will stimulate that part of the research and development programme concerned with the new production process. The aid appears to have been decisive in the company's decision to undertake new engineering research, in addition to its day-to-day research work, to develop the triplex process. To that end, the Commission has analysed the difference between the company's past and present research expenditure, set to rise from 0,5 % to 1,5 % according to forecasts for 1998. At the same time, its full time staff would rise from 9 to 16.

Lastly, the amount earmarked for R & D in 1998 in connection with the notified project is appreciably higher than the average for the sector, which ranges from 0,9 % to 1 %.

Thus the variation in the amount allocated to research (which doubles from 0,5 % to 1 % of turnover), the number of persons assigned to the research programme (which almost doubles from 9 to 16) and the investments in research and development expressed as a percentage of turnover (1,5 % of turnover against an industry average of around 1 %) appear to indicate that, in this case, the condition that aid must serve as an incentive has been satisfied.

A large proportion of the investments in question, to the tune of ITL 2,823 billion, do not appear to be covered by the Community framework for State aid for research and development as they are not aimed at the acquisition of new knowledge for use in developing new products and/or production processes, and, moreover, can be converted or used for industrial applications or easily exploited from a commercial point of view; however, the investments in the triplex process, amounting to a total of ITL 3,177 billion, may be regarded as compatible with the common market.

Italy has notified the Commission of its intention to grant aid of around 25 % of the investments in question. The aid which may be authorised for research and development concerning the triplex process is therefore ITL 794 million.

V

With regard to environmental aid, the Commission notes that the information provided by the Italian authorities is not sufficient to alter the substance of its original assessment of the

compatibility of the aid concerning investments for the re-roofing of the 'Sede' and 'Erre' buildings. Although re-roofing will remove the dangers linked with asbestos, nevertheless this type of work, in this case replacement of the roofing material, was necessary in any case, in view of the totally dilapidated state of the roofs. There is every indication, therefore, that the work would have had to be carried out in any case, even if there had been no asbestos involved, since the state of disrepair of the roofs made it absolutely essential and urgent, as is established by the experts' reports sent to the Commission.

In accordance with the Steel Aid Code, and in particular the Annex thereto, the Commission concludes that ecological investments in projects which cannot in any event be delayed are not eligible for environmental aid.

This means that the notified aid concerning investments amounting to ITL 6,5 billion intended for the re-roofing of the 'Sede' and 'Erre' buildings cannot be authorised.

The State aid planned for the roofing of the two buildings cannot therefore be authorised. The overall aid for the investments in environmental protection which amount to ITL 43 billion (ITL 49,5 billion notified, less the 6,5 billion for the roofing), cannot therefore exceed the total sum of ITL 11,145 billion, i.e. ITL 9,390 billion, which is 30 % of ITL 31,3 billion of investments, plus ITL 1,755 billion of aid, equivalent to 15 % of the remaining ITL 11,7 billion of investments.

Lastly, the Commission notes that it is not possible to authorise an increase in the aid intensity such as would be allowed for environmental protection investments carried out by an SME, because ACB, which is part of the Valbruna di Vicenza steel group, employs well over 250 people.

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Italy plans to grant to Acciaierie di Bolzano SpA to finance investment in environmental protection, up to a maximum gross amount of ITL 11,145 billion, is compatible with the common market for coal and steel.

Article 2

The State aid which Italy plans to grant to Acciaierie di Bolzano SpA to finance investment in research and development, up to a gross maximum amount of ITL 794 million, is compatible with the common market for coal and steel.

Article 3

Within two months of the date of notification of this Decision, Italy shall inform the Commission of the amount of aid granted to Acciaerie di Bolzano SpA, to enable the Commission to verify that the amounts laid down in Articles 1 and 2 have not been exceeded.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels, 28 October 1998.

For the Commission

Karel VAN MIERT

Member of the Commission
